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CONCORD, N.H.

New Hampshire State Tax Commission
State House

Gentlemen:

Under date of January 6, 1953 you have referred to this office the letter of F. V. Sonzagni, Chief, Legal Branch, Corps of Engineers, U. S. Army, dated October 30, 1952, relative to the application of R. L. c. 79-A to timber being cut in connection with land clearance on the airbase in the town of Newington. This letter was referred to us in accordance with the suggestion of Mr. Bonzagni that our opinion be sought in the matter.

From previous consideration of this matter it is our understanding that timber is being cut by contractors who become owners of the timber at the time of the severance. The single question is whether they may be required to pay the severance tax imposed by the chapter cited in respect to such timber. We answer in the affirmative.

The land on which the base is being constructed was acquired without the consent of the State of New Hampshire. C. F. R. L. c. 1 s. 1. There remains, therefore, jurisdiction in the State to impose a non-discriminatory tax on persons other than the federal government in respect to such lands, so long as such tax does not embarrass, hinder or burden that government in carrying out the objects for which the lands were acquired. Surplus Trading Co. v. Cook, 74 L. Ed., 1091, 1094-1095. The tax imposed by R. L. c. 79-A, falling as it does upon the contractors and not upon the United States, does not in any way impede the operations of the federal government. It falls within the permissible limits of the state taxing power. See James v. Dravo Construction Co., 82 L. Ed. 155, 166 et seq. And while the federal government might itself sever the timber involved without tax, it must be recognized that in this case it is not doing so.

The tax plan established by R. L. c. 79-A has for its primary objective, as is set forth in its declaration of policy (see Laws 1949, c. 295), the conservation of the State's forest resources. It must not be overlooked, however, that the objective of the statute is also revenue.

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Prior to the enactment of the statute in question, growing wood and timber was subjected to the general property tax, R. L. c. 73, s. 7, with a certain limited exemption for classified forest lands. R. L. c. 73, ss. 31-47. In order to encourage the growing of timber until it should fully mature, R. L. c. 79-A exempted growing timber from the general property tax theretofore assessed against it (s. 2); taxation is postponed until severance upon which event a tax at the rate of 10% of the stumpage value is assessed in respect to the timber.

It will be noted that the withdrawal of growing timber from the list of taxable property must necessarily have resulted in a loss of revenue to the towns in which such timber was located. It therefore became necessary that the State itself reimburse the towns for the revenue thus lost. Provision for reimbursement was made in R. L. c. 79-A, ss. 12-19, the State annually reimbursing the towns for revenue lost, with further provision for possible ultimate repayment to the State from the proceeds of the severance tax when it should be collected. See section 18 (1).

Standing wood and timber in the town of Newington, like all other growing timber in the State, has, thus, been exempt from taxation under the statute since March 31, 1950, its effective date. Since that time the State has made reimbursement to the town because of such exemption. The revenue objective of R. L. c. 79-A-- including possible repayment to the State -- can be realized only by the collection of the tax which has been postponed until the severance now taking place.

It is suggested in Mr. Bonzagni's letter that the contractors are not necessarily in the business of cutting and selling timber, and that in many instances they dispose of brush, trees, stumps and timber by other means than resale. To the extent that it is to be inferred from this that some of the growth cut is worthless for practical purposes, the, of course, no tax would be assessed upon the same, since the tax is based upon a percentage of stumpage value.

Very truly yours,

Warren E. Waters
Assistant Attorney General

W.E.W:RM